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March 31, 2017

VIA ECF

The Honorable John G. Koeltl
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

RE: *Alpha Capital Anstalt v. Real Goods Solar, Inc., et al.*, No. 17-cv-1186

Dear Judge Koeltl:

We represent Defendant Roth Capital Partners, LLC (“Roth Capital”) in the above referenced action. By letter dated March 28, 2017, counsel for defendant Real Goods Solar, Inc. (“RGS”) wrote to Your Honor to request a pre-motion conference pursuant to Your Honor’s Rules of Practice 1.F and 2.B, as RGS intends to file a motion, under Fed. R. Civ. P. 12(b)(6) and 9(b), to dismiss plaintiff’s complaint for failure to state a claim and plead fraud with particularity. The Court has since scheduled a pre-motion conference for April 4, 2017. The undersigned counsel will attend that conference on Roth Capital’s behalf.

Roth Capital agrees, for the reasons stated in RGS’s letter, that Plaintiff’s Section 12 claim against Roth Capital (Count III) does not satisfy the pleading requirements and, accordingly, should be dismissed.

Additionally, Plaintiff’s aiding and abetting fraud claim against Roth Capital (Count V) should be dismissed because plaintiff fails to state a claim for common law fraud, for the reasons stated in RGS’s letter. It is well settled that an aiding-and-abetting claim cannot lie if no predicate claim has been stated. *See, e.g., Lerner v. Fleet Bank, N.A.*, 459 F.3d 273, 292 (2d Cir. 2006) (explaining that “[t]o establish liability for aiding and abetting fraud,” a plaintiff “must show . . . the existence of a fraud”) (internal quotation marks omitted).

Thank you for your consideration of this matter.



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Respectfully submitted,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke.

Caryn G. Schechtman

cc: David S. Hoffner, Esq. (hoffner@hoffnerpllc.com);
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